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MAR 05 2007

Appln. No. 10/724,665

ELECTION IN RESPONSE TO RESTRICTION REQUIREMENT

Docket No. KFHI-113

different apparatus, or (b) the apparatus as claimed can be used to practice a materially different process. "The burden is on the examiner to provide reasonable examples that recite material differences." See MPEP 806.05(e).

The Examiner stated that the inventions of Groups I and II are related as process and apparatus for its practice. The Examiner maintains that in this case, the apparatus as claimed can be used to practice another and materially different process such as making shaped plastic pieces. However, the apparatus as claimed does not recite making plastic pieces, but rather the apparatus claims recite "apparatus for making curved or waved chips" in the preamble. Also, the body of the apparatus claims recite apparatus components for making the curved or wave chips. Also, the Examiner has not shown that plastic pieces can be shaped into a curved or waved shape between a conveyer belt and a roller, and cooled and removed from the roller in a curved or waved shape with a curtain of air. Reconsideration and withdrawal of the restriction requirement between Groups I and II are respectfully requested.

## II. RESTRICTION BETWEEN GROUPS I AND III

Pursuant to MPEP 806.05(f), a process of making and a product made by the process can be shown to be distinct if: (a) the process as claimed is not an obvious process for making the product and the process as claimed can be used to make another materially different product, or (b) the product as claimed can be made by another materially different process.

The Examiner stated that the inventions of Groups I and III are related as process of making and product made. The Examiner maintains that in this case, the product as claimed can be made by another and materially different process such as shaping by hand.

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However, the Examiner has not shown how the product would be made by hand. To obtain a wave cookie chip having a concave surface and an opposing convex surface, each surface being at least substantially free of surface bubbles or blisters, the cookie chip would have to be handled hot to be able to curve the product into a wave shape, which could injure or be uncomfortable to one's hands. Also, the hot product would have to be maintained in a wave shape while cooling it sufficiently to set the wave shape. It is not seen how the shaping, shape maintenance and cooling to set the shape would be reasonably accomplished by hand without using any apparatus. Thus, the requirements of MPEP 806.05(f) have not been met. Reconsideration and withdrawal of the restriction requirement between Groups I and III are respectfully requested.

### III. RESTRICTION BETWEEN GROUPS II AND III

Pursuant to MPEP 806.05(g), an apparatus and a product made by the apparatus can be shown to be distinct if: (a) the apparatus as claimed is not an obvious apparatus for making the product and the apparatus as claimed can be used to make another and materially different product; or (b) the product as claimed can be made by another and materially different apparatus.

The Examiner stated that the inventions of Groups II and III are related as apparatus and product made. The Examiner maintains that in this case, the product as claimed can be made by another and materially different apparatus such as shaping by a roller pin and stick. However, the Examiner has not shown how the product would be made by a roller pin and stick. How is the stick used? How is the cookie chip curved around the roller pin while in a malleable and hot state and removed so as to retain a curved shape with a roller pin and a stick? To obtain a wave cookie chip having a

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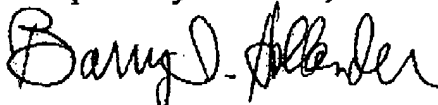
concave surface and an opposing convex surface, each surface being at least substantially free of surface bubbles or blisters, the cookie chip would have to be handled hot to curve it, and then cooled to set the wave shape. It is not seen how the shaping and cooling would be accomplished by a roller and a stick. Reconsideration and withdrawal of the restriction requirement between Groups II and III are respectfully requested.

#### IV. CONCLUSION

If there are any questions regarding this Response or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application.

If there are any discrepancies in the fees, please charge or credit our Deposit Account No. 501032 (Docket No. KFHI-113).

Respectfully submitted,



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